

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ARLINA J. HOMUTH AND CHARLES A.
HOMUTH, on behalf of and as
parents and natural guardians of
ZACHARY HOMUTH, a minor,

Petitioners,

vs.

Case No. 12-3382N

FLORIDA BIRTH- RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

TARPON SPRINGS HOSPITAL
FOUNDATION, INC., d/b/a HELEN
ELLIS MEMORIAL HOSPITAL, MAHNEE
DINSMORE, M.D., BERENICE M.
ROWELL, R.M., L.M., C.P.M., AND
LABOR OF LOVE ENTERPRISES,

Intervenors.

FINAL ORDER APPROVING STIPULATION FOR ENTRY OF AWARD

This cause came on for consideration pursuant to sections 766.304 and 766.305(7), Florida Statutes, upon the Stipulation and Joint Petition for Compensation of Claims Arising out of Florida Birth-Related Neurological Injury Pursuant to Chapter 766, Florida Statutes (Stipulation and Joint Petition), filed with the Division of Administrative Hearings on December 17, 2013, for the entry of an order approving the resolution of a

claim for compensation benefits filed in accordance with the provisions of chapter 766 and a resolution of the exclusive remedy otherwise available as outlined in chapter 766.

By the terms of their stipulation, Petitioners, Arlina J. Homuth and Charles A. Homuth, on behalf of and as parents and natural guardians of Zachary Homuth, a minor; Respondent, the Florida Birth-Related Neurological Injury Compensation Association (NICA); and Intervenors, Tarpon Springs Hospital Foundation, Inc., d/b/a Helen Ellis Memorial Hospital, Mahnee Dinsmore, M.D., Berenice M. Rowell, R.M., L.M., C.P.M., and Labor of Love Enterprises have agreed that Arlina J. Homuth and Charles A. Homuth are the parents and legal guardians of Zachary Homuth (Zachary), a minor; that Arlina J. Homuth and Charles A. Homuth are the "Claimants" as defined by section 766.302(3); that Zachary was born a live infant on or about July 20, 2011, at Helen Ellis Memorial Hospital, a "hospital" as defined by section 766.302(6) located in New Port Richey, Florida; and that Zachary's birth weight exceeded 2,500 grams. The Parties have further agreed that Mahnee Dinsmore, M.D., provided obstetrical services at Zachary's delivery and, at all material times, was a "participating physician" in the Florida Birth-Related Neurological Injury Compensation Plan, as defined by section 766.302(7). The Parties have agreed that Zachary suffered a "birth-related neurological injury," as that term is

defined by section 766.302(2), which was the sole and proximate cause of Zachary's permanent and substantial mental and physical impairments.

It is ORDERED:

1. The Stipulation and Joint Petition filed on December 17, 2013, is hereby approved, and the Parties are directed to comply with the provisions of the Stipulation and Joint Petition.

2. Petitioners, Arlina J. Homuth and Charles A. Homuth, as the parents and natural guardians of Zachary Homuth, a minor, are awarded one hundred thousand dollars (\$100,000.00), pursuant to section 766.31(1)(b)1., to be paid in a lump sum payment; payment of benefits up to and including the effective date of the Joint Stipulation and Petition pursuant to section 766.31(1)(a), subject to the provisions of paragraph 19 of the Stipulation and Joint Petition; and payment of future expenses as incurred.

3. Respondent shall pay John Bales Attorneys, attorneys for Petitioners, ten thousand dollars (\$10,000.00) for attorney's fees and two thousand five hundred dollars (\$2,500.00) for expenses, totaling twelve thousand five hundred dollars (\$12,500.00) in full, for services rendered in the filing of Petitioners' claim.

4. Upon the payment of the award of \$100,000.00, past benefit/expenses, and attorneys' fees and costs the claims of Petitioners shall be deemed fully satisfied and extinguished,

except for Respondent's continuing obligation under section 766.31(2) to pay future expenses as incurred.

5. The Division of Administrative Hearings retains jurisdiction over this matter to resolve any disputes, should they arise, regarding the parties' compliance with the terms of this Order.

DONE AND ORDERED this 23rd day of December, 2013, in Tallahassee, Leon County, Florida.

Susan Belyeu Kirklund

SUSAN BELYEU KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of December, 2013.

COPIES FURNISHED:
(via certified mail)

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Review of a final order of an administrative law judge shall be by appeal to the District Court of Appeal pursuant to section 766.311(1), Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy, accompanied by filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal. See § 766.311(1), Fla. Stat., and Fla. Birth-Related Neurological Injury Comp. Ass'n v. Carreras, 598 So. 2d 299 (Fla. 1st DCA 1992).